

Mathew K. Higbee, Esq., SBN 11158
HIGBEE & ASSOCIATES
3481 E Sunset Rd., Suite 100
Las Vegas, NV 89120
(714) 617-8350
(714) 597-6729 facsimile
Email: mhigbee@higbeeassociates.com

Attorney for Plaintiff,
ROBERT MILLER

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
LAS VEGAS DIVISION**

ROBERT MILLER,

Plaintiff,

v.

4INTERNET, LLC; and DOES 1
through 10 inclusive,

Defendants.

Case No. _____

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF FOR
COPYRIGHT INFRINGEMENT**

DEMAND FOR JURY TRIAL

Plaintiff, Robert Miller alleges as follows:

JURISDICTION AND VENUE

1. This is a civil action seeking damages and injunction relief for copyright infringement under the Copyright Act of the United States, 17 U.S.C. § 101 *et seq.*

2. This Court has subject matter jurisdiction over Plaintiff's claims for

copyright infringement pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a).

3. This Court has personal jurisdiction over Defendants because Defendants conduct business and/or reside within the State of Nevada Defendants' acts of infringement complained of herein occurred in the State of Nevada, and Defendants caused injury to Plaintiff within the State of Nevada.

4. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and 1400(a) in that this is the judicial district in which a substantial part of the acts and omissions giving rise to the claims occurred. Alternatively, venue is also proper pursuant to 28 U.S.C. § 1400(b) because the Defendants reside and have a regular and established place of business in this judicial district.

PARTIES

5. Plaintiff Robert Miller ("Plaintiff or "Miller") resides in the State of New York and is a professional photographer by trade.

6. Plaintiff is informed and believes, and thereon alleges, that Defendant 4Internet, LLC. ("Defendant") is a limited liability company duly organized and existing under the laws of the State of Nevada, with a place of business at 8275 South Eastern Avenue, Suite 200-265, Las Vegas, NV 89123.

7. Defendant owns and operates the websites, <https://www.4jewish.com/> and <http://www.4rightwing.com/> (collectively the "Websites"). A true and correct copy of the GoDaddy WHOIS registration

information are attached hereto as Exhibits A and B respectively.

8. Defendant's site, <https://www.4jewish.com/>, "is a Jewish search engine and news discovery site that focuses on Jewish perspectives." *See* <https://www.4jewish.com/about/>.

9. Defendant's site, <http://www.4rightwing.com/>, "is a search engine for those who are tired of the left-wing liberal bias . . ." and references <https://www.4jewish.com/>. *See* <http://www.4rightwing.com/about/>.

10. Plaintiff is unaware of the true names and capacities of the Defendants sued herein as DOES 1 through 10, inclusive, and for that reason, sues such Defendants under such fictitious names. Plaintiff is informed and believes and on that basis alleges that such fictitiously named Defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged were proximately caused by the conduct of said Defendants. Plaintiff will seek to amend the complaint when the names and capacities of such fictitiously named Defendants are ascertained. As alleged herein, "Defendants" shall mean all named Defendants and all fictitiously named Defendants.

11. For the purposes of this Complaint, unless otherwise indicated, "Defendant" includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogates, representatives and insurers of Defendants named in this caption.

FACTUAL ALLEGATIONS

12. Plaintiff Robert Miller is a professional photographer by trade. Miller has licensed or sold his photographs to dozens of major media outlets such as The New York Post, The New York Times, Rolling Stone Magazine, South China Morning Post, Agence France-Press, Newsday, New York Daily News, Newsweek Magazine, People Magazine, The Associated Press, and USA Today.

13. Miller is the sole author and exclusive rights holder to a photograph of a goat escaping the New Jersey livestock auction house (the “Image”). A true and correct copy of the original Image is attached hereto as Exhibit C.

14. Miller registered the Images with the United States Copyright Office under registration number VA0002120723.

15. Miller’s Image originally appeared in an article published by the New York Post (“Post”) on August 9, 2018, titled *Rogue goat may have helped dozens of farm animals escape* (“Post Article”). A true and correct copy of the original Post Article is attached hereto as Exhibit D.

16. Miller’s Image featured in the Post Article included a credit below the bottom left corner crediting the Image to Miller. *See* Exhibit D.

17. On or about August 31, 2018, Miller discovered that Defendant had used the Image on Defendant’s Websites by re-posting the original Post Article (the “Infringing Post”). True and correct screenshots of the Infringing Post

featuring Miller's Image on Defendant's Websites are attached hereto as Exhibit E.

18. Miller never authorized Defendants to use the Image in any manner.

19. On or about September 5, 2018, Plaintiff's counsel sent a cease and desist letter to Defendant counsel informing it of the unauthorized use of the Image and requesting, *inter alia*, that Defendant remove the Infringing Post.

20. Defendant's counsel responded and the parties corresponded between September 25, 2018 and October 1, 2018. However, the parties were unable to reach an agreement in this matter.

21. On information and belief, Defendant knew it did not have permission to use the Image on its Website and willfully infringed Miller's Image.

FIRST CAUSE OF ACTION
COPYRIGHT INFRINGEMENT
17 U.S.C. § 101 *et seq.*
(Against All Defendants)

22. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

23. Plaintiff did not consent to, authorize, permit, or allow in any manner the said use of Plaintiff's unique and original Images.

24. Plaintiff is informed and believes and thereon alleges that the Defendants willfully infringed upon Plaintiff's copyrighted Image in violation of Title 17 of the U.S. Code, in that they used, published, communicated, posted,

publicized, and otherwise held out to the public for commercial benefit, the original and unique Images of the Plaintiff without Plaintiff's consent or authority, by using them in the Infringing Post.

25. As a result of Defendants' violations of Title 17 of the U.S. Code, Plaintiff is entitled to any actual damages pursuant to 17 U.S.C. §504(b), or statutory damages in an amount up to \$150,000.00 pursuant to 17 U.S.C. § 504(c).

26. As a result of the Defendants' violations of Title 17 of the U.S. Code, the court in its discretion may allow the recovery of full costs as well as reasonable attorney's fees and costs pursuant to 17 U.S.C § 505 from Defendants.

27. Plaintiff is also entitled to injunctive relief to prevent or restrain infringement of his copyright pursuant to 17 U.S.C. § 502.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants and each of them as follows:

- For statutory damages against each Defendant in an amount up to \$150,000.00 for each infringement pursuant to 17 U.S.C. § 504(c);
- For general and special damages against each Defendant according to proof together with interest thereon at the maximum legal rate;
- For costs of litigation and reasonable attorney's fees against each Defendant pursuant to 17 U.S.C. § 505;

- For an injunction preventing each Defendant from further infringement of all copyrighted works of the Plaintiff pursuant to 17 U.S.C. § 502; and
- For any other relief the Court deems just and proper.

Dated: October 31, 2018

Respectfully submitted,

/s/ Mathew K. Higbee

Mathew K. Higbee, Esq.

Nevada Bar No. 11158

HIGBEE & ASSOCIATES

3481 E Sunset Rd., Suite 100

Las Vegas, NV 89120

(714) 617-8350

(714) 597-6729 facsimile

Counsel for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff, Robert Miller, hereby demands a trial by jury in the above matter.

Dated: October 31, 2018

Respectfully submitted,

/s/ Mathew K. Higbee

Mathew K. Higbee, Esq.

Nevada Bar No. 11158

HIGBEE & ASSOCIATES

3481 E Sunset Rd., Suite 100

Las Vegas, NV 89120

(714) 617-8350

(714) 597-6729 facsimile

Counsel for Plaintiff